

**REMARKS**

By this amendment, Applicants amend claims 17, 24, 61, 66, 70, and 71 to more clearly define the features of those claims, and cancel claims 2-5, 11, 12, 20-23, and 57 without prejudice or disclosure; and add new claims 74 and 75. No new matter has been added.

Claims 17, 18, 24, 25, 56, 58-62, 64-68, and 70-75 are pending.

At the outset, Applicants note a discrepancy between the title of the instant application as amended in the Preliminary Amendment dated October 12, 2005 and the title of the instant application in the Patent Application Information Retrieval (PAIR) system. Applicants request the Examiner correct the title in the PAIR system to the amended title in the Preliminary Amendment dated October 12, 2005.

The Examiner rejected claims 17-18, 20, 24-25, 56, 58-62, 64-68, and 70-73 under 35 U.S.C. §103(a) as unpatentable over IEEE Std 802.16-2001 (IEEE) in view of U.S. Patent No. 6,272,117 to Choi et al. (Choi) and Background of the instant application (Background). Applicants respectfully traverse this rejection.

Amended claim 17 recites, among other things, the following feature: "monitoring means for monitoring capacity request messages received from the at least one subscriber station, capacity grant messages sent by a base station and data transmissions received from the at least one subscriber stations, wherein the capacity request messages comprise information based on previous capacity requests of the at least one subscriber station."

In contrast, Choi discloses receiving an indication of channel availability which is piggy-backed onto an acknowledgement message. Specifically Choi states:

In one implementation of the method, the message indicating communication channel availability is provided in a field within a header of a control packet. The indication of channel availability can be piggy-backed onto an acknowledgment message sent by the

base station in response to a previous message received from the mobile wireless data terminal.

Choi, col. 3 lines 46-52. The Examiner alleges that the channel availability piggy-backed onto an acknowledgement message corresponds to a capacity request messages comprising “information based on previous capacity requests of the at least one subscriber station,” as recited in claim 17. Applicants disagree for at least the reasons stated below.

The Choi acknowledgement message does not comprise information based on previous capacity requests. Specifically, the Choi acknowledgement message contains information on current channel availability in the base station rather than information based on previous capacity request messages. While the Choi acknowledgement message is sent in response to a message from a mobile terminal, the acknowledgement message merely comprises current channel availability at the base station and not “information based on previous capacity requests,” as recited in claim 17. Therefore, Choi fails to disclose at least the following feature of claim 1: “monitoring means for monitoring capacity request messages received from the at least one subscriber station, capacity grant messages sent by a base station and data transmissions received from the at least one subscriber stations, wherein the capacity request messages comprise information based on previous capacity requests of the at least one subscriber station.” While IEEE discloses an air interface for fixed broadband wireless access, and Background discloses QoS, neither IEEE nor Background cures the aforementioned deficiency of Choi. Therefore, claim 17 is allowable over IEEE, Choi, and Background, whether these references are taken individually or in combination, and the rejection of claim 17 under 35 U.S.C. §103(a) should be withdrawn.

Independent claims 24, 25, 56, 61, 64, and 66, include similar features as noted above with respect to claim 17. For at least the reasons noted above with respect to claim 17,

independent claims 20, 24, 25, 56, 61, 64, and 66 as well as claims 18, 58-60, 62, 65, 67, 68, and 70-73, at least by reason of their dependency, are allowable over IEEE, Choi, and Background, whether these references are taken individually or in combination, and the rejection of those claims under 35 U.S.C. §103(a) should be withdrawn.

Regarding new claims 74 and 75, Applicants submit that the cited art fails to disclose or suggest the features recited in those claims for at least the reasons given above.

**CONCLUSION**

On the basis of the foregoing amendments, the pending claims are in condition for allowance. It is believed that all of the pending claims have been addressed in this paper. However, failure to address a specific rejection, issue or comment, does not signify agreement with or concession of that rejection, issue or comment. In addition, because the arguments made above are not intended to be exhaustive, there may be reasons for patentability of any or all pending claims (or other claims) that have not been expressed. Finally, nothing in this paper should be construed as an intent to concede any issue with regard to any claim, except as specifically stated in this paper.

The Commissioner is hereby authorized to charge any additional claim fees and any additional fees that may be due, or credit any overpayment of same, to Deposit Account No. 50-0311, Reference No. 39700-768001US/NC39727US. If there are any questions regarding this reply, the Examiner is encouraged to contact the undersigned at the telephone number provided below.

Respectfully submitted,



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